TRANSP.

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

96082

FILE: B-192834 DATE: April 4, 1979

MATTER OF: A. B. James Freight Lines

DHG 01402

DIGEST:

[Request for
Carrier charge for ~~truck driver's~~ help in loading shipment] in addition to charge for forklift truck and operator hired by carrier as shipper's agent is not allowable where shipper did not request help or annotate request in some manner on shipping documents as required by tender and tariff.

A. B. James Freight Lines (ABJ), in a letter dated September 8, 1978, requests the Comptroller General of the United States to review the General Services Administration's (GSA) action on one of its bills for transportation charges. See 49 U.S.C. 66(b) (Supp. V, 1975), and 4 C.F.R. 53.3 (1978). GSA, after auditing the bill, notified ABJ of an overcharge that in the absence of refund was collected by deduction from a subsequent bill. A deduction constitutes a reviewable settlement action [4 C.F.R. 53.1] and ABJ's letter complies with the criteria for requests for review of that action. 4 C.F.R. 53.3 (1978).

GSA reports that on April 15, 1976, ABJ sent two trucks to pick up a shipment of 24 pieces of miscellaneous freight, weighing 40,320 pounds, for transportation under Government bill of lading (GBL) No. K-3201015 from pier 7, Military Ocean Terminal Bay Area (MOTBA), Oakland Army Base (OARB), Oakland, California, to the Naval Air Station, North Island, San Diego, California.

The GBL contained this statement:

"SHIPPER TO LOAD AND CONSIGNEE TO UNLOAD."

"2 UNITS OF EQUIPMENT OF 40' FT OF LOADING SPACE ORDERED

2 UNITS OF EQUIPMENT OF 40' FT OF LOADING SPACE FURNISHED."

In the space on the GBL provided for listing "Tariff or Special Rate Authorities," reference is made to "JAMES TDR #16 30 PVU," a reference to ABJ's Tender No. 16, its rate authority. ABJ billed at $238.95 per vehicle. GSA furnished this breakdown of the charges:

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"Freight Charges as 30M	$.068/$204.00	(30,000-pound minimum weight per truckload)
*Lift Rental Charge	20.00	
*Shipment loaded by carrier at request of consignor one (1) hour	14.95	
	$238.95"	

For the two vehicles, the Government was charged $477.90. The carrier's bill No. A-709 was paid in August 1976 by the United States Army Finance Support Agency, Indianapolis, Indiana. After its audit of the bill, GSA issued a notice of overcharge for $29.90 representing a charge of $14.95 per vehicle for the driver's help in loading. After an exchange of correspondence, the overcharge was deducted by setoff; ABJ asks that we review that action.

The issue in this matter is the legality of ABJ's assessment of the driver's loading charge. According to ABJ and verified by the Department of the Army, Military Traffic Management Command (MTMC), due to a collective bargaining agreement in effect at MOTBA, the contractor operating the pier is prohibited from loading. Therefore, the carrier acts as agent for the United States Government by engaging the services of an independent forklift operator to carry out the "Shipper load, consignee unload" requirement. The bill for these services is submitted for certification by the carrier and is included with the GBL for payment.

ABJ contends that the carrier becomes an agent for the United States Government in loading the two trucks and therefore can legally rate the forklift charge as an accessorial service. Under its theory the truck driver is considered a helper and can be billed as such within the accessorial service provisions of Tender No. 16.

GSA questions whether any additional help was needed beyond the services of the forklift and its operator. It contends that by paying for the forklift and operator, no further legal obligation was incurred.

The GBL was explicit, shipper was to load and consignee to unload. It refers to Tender 16 which similarly includes the statement, "The Government shall load and unload all shipments." A legal question might be raised as to the legal effect of the collective bargaining agreement on the loading and unloading provisions contained in the GBL and tender. The Army has stated that the carrier acted as the Government's agent for purposes of loading and unloading and we will not dispute that contention in this case.

The question remaining is whether payment for the truck driver's alleged help in loading was required by agreement between shipper and carrier. The tender is determinative. It incorporates by reference several items in Minimum Rate Tariff No. 2, issued by the California Public Utilities Commission, including item 140.

Item 140 of the Minimum Rate Tariff No. 2 requires the carrier to assess an additional charge, as provided in item 145(a) of the same tariff, only

> "when carrier performs, at shipper's . . . request or order, service such as . . . providing helpers for loading or unloading, or any other like service which is not authorized to be performed under rates named in this tariff . . ."

Furthermore, paragraph 2 of item 140 states:

> "The provisions of this item shall not apply when a helper is provided for any reason other than shipper's or receiver's request or order. The reason for supplying the helper shall be recorded on shipping and accessorial service documents."

Applying the tariff language to this case, while no dispute exists as to the hiring of the forklift and operator, the shipper did not request or order the use of the driver as a helper. We need not reach the question of whether he was needed or actually used. The documents pertinent to this case do not contain notations requesting use of a helper. No right to payment has been established since the alleged help was not authorized by the shipper as required by the tariff. Therefore, the overcharge assessment was proper.

We have held similarly when dealing with liability for additional costs attendent to a shipper's request for the exclusive use of a carrier's vehicle. As a precondition for paying for the service, the tariff requires the specific request for exclusive use to be clearly made and the shipper to indorse the bill of lading in support of its request. Generally, failure to meet these tariff requirements creates no legal liability to pay the exclusive use charge. See Campbell "66" Express, Inc. v. United States, 302 F.2d 270 (Ct.Cl. 1962); 44 Comp. Gen. 799 (1965). In this connection, see Note 4 in Tender 16 which requires a notation on the GBL when exclusive use service is requested by the Government.

The GSA's settlement is sustained.

R.F. Keller

Deputy Comptroller General
of the United States